

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BRIAN MISER,
Plaintiff

Case No. 1:05-cv-407

vs
REGINALD WILKINSON, et al.,
Defendants

REPORT AND RECOMMENDATION
(Spiegel, J.; Hogan, M.J.)

Plaintiff, an inmate at the Warren Correctional Institution, filed this action pro se alleging a violation of his constitutional rights.

On August 1, 2005, three Court orders mailed to plaintiff were subsequently returned to the Clerk by the United States Postal Service as undeliverable, noting that plaintiff had been released from prison. (Docket notation of 8/1/2005). On August 5, 2005, the Court ordered plaintiff to show cause within fifteen days why this case should not be dismissed for lack of prosecution. (Doc. 10). This Order was sent to plaintiff by certified mail and also returned as "undeliverable/released from prison." (Docket notation of 8/10/2005).

To date, more than fifteen days later, plaintiff has yet to reply to the Court's Order. Accordingly, dismissal is appropriate. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962); *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991).

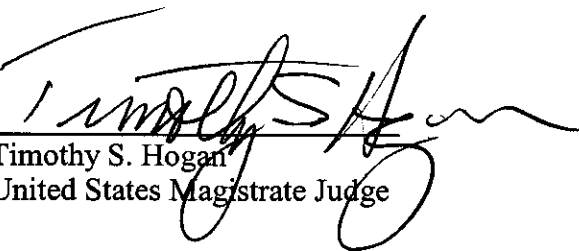
IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be **DISMISSED** with prejudice for lack of prosecution.
2. The Court certify pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons an appeal

of this Court's Order would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997).

Date

8/23/05


Timothy S. Hogan
United States Magistrate Judge

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**NOTICE TO THE PARTIES REGARDING THE FILING OF OBJECTIONS TO THIS
R&R**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **TEN (10) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **TEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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1. Article Addressed to:

Brian Miser
 448-785
 Warren Corr Inst.
 PO Box 120
 Lebanon, Ohio 45036

2. Article Number
(Transfer from service label)

7004 0750 0003 9306 0745

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